

7. Resolving Disputes About Guardianships and Conservatorships

Ch. 7 - Q32: How do I change a guardian?

A32: Any person interested in the welfare of the protected person may petition for removal of a guardian if it would be in the best interest of the protected person. This means that almost anyone who is interested in the life of the ward can seek to have a guardian removed or a new guardian appointed; even the ward can petition.

Ch. 7 - Q33: If a person identified as an "interested party" doesn't respond to the initial Notice of Interested Party Form that I send out, am I, as guardian, required to send a new Notice of Interested Party Form to them every year?

A33: Interested persons are defined by law and entitled to notice regarding the guardianship/conservatorship and welfare of the protected person. However, an interested person can waive their right to receive the annual reports by filing a Waiver of Notice with the Court. This does not affect their standing as an interested person or their receipt of notice of other activity in the case.

If as guardian you are concerned that it would not be in the best interest of the protected person for someone who is an interested person under the law to receive annual reports or other information about the ward, you can tell the judge about those concerns when you are appointed, or you can submit a written explanation and request for direction to the judge. § 6-1433

Ch. 7 - Q34: My family or friends cannot agree about whether my loved one needs a guardian or conservator or who should be

appointed. What should I do?

A34: A judge will only appoint a guardian if it is the least restrictive way to meet the needs of the person to be protected. It is best to work with your loved one's support group to identify other options before you explore a guardianship for them.

You can also try to negotiate with the interested parties who would be the best choice to nominate be the guardian(s) or conservator(s)

If you need help in reaching an agreement, Mediation may be helpful. Mediation is a confidential process for resolving disagreements that is facilitated by a trained, neutral third-party mediator. The process gives all parties a chance to be heard in a safe, comfortable environment where the family and others may decide a fair solution. Mediation sessions can be voluntarily scheduled at convenient a time and can be held remotely. (see Q35)

If there is a disagreement as to the capacity of an individual to care for themselves, or the suitability of the individual nominated to serve as guardian or conservator, the hearing before a judge allow the various parties to present information and arguments to the judge, so the judge will be able to make a decision. Intimate details concerning the lives of the ward and of the interested parties will likely surface in a public forum. These "contested" guardianship or conservatorship proceedings can negatively impact relationships and be emotionally taxing for everyone involved.

If a guardianship or conservatorship case is contested, the Court has the power to order all parties to mediation. In that circumstance, all parties must participate. Neb. Rev. Stat. § 25-2911(1)(d).

Ch. 7 - Q35: Why would mediation be a good idea?

A35: There are a number of benefits to mediation when there is disagreement among friends and family members, including:

- Personalized solutions to difficult problems. You and the other participants have direct input in the solutions agreed upon, instead of relying solely on a judge's opinion.
- Not only can resolve legal issues, but also helps with personal or familial problems.
- Preserves relationships by using a collaborative process instead of an adversarial process.
- Reduces the likelihood of future, reoccurring disputes by helping the other participants find ways avoid or manage future disagreements.
- Can save time and money.

Ch. 7 - Q36: What happens in a mediation session?

A36: There may be one or two mediators who will facilitate discussion by asking questions to help those involved identify the key conflicts and to make sure issues are clear to the participants. Everyone will have an opportunity to be heard and to share their viewpoint in a structured environment. The mediators will help participants engage in creative and collaborative dialogue to determine possible solutions by exploring ways to come to an agreement to resolve the issues. <http://themediationcenter.org/pg5.cfm>.
